

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 512 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SG MAJMUDAR,

Versus

SURAT DIST. CO-OP MILK PRODUCERS

Appearance:

NOTICE SERVED for Petitioner
MR RR MARSHALL for Respondent No. 1
Mr.K.P. Rawal, APP, for respondent No.5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. The appellant was duly represented by learned advocate Mr. R.V. Deshmukh, but, after his appointment as President of the Secondary Education Tribunal, notice came to be issued to the appellant and, though the appellant was duly served with the notice, no appearance has been filed by any advocate on behalf of the appellant. This matter was notified on the final hearing board 16 times. This being an old matter, it is taken up

for hearing today.

2. The Food Inspector, Surat Municipal Corporation, by filing this appeal, has challenged the order of acquittal dated May 25, 1988, recorded by learned Judicial Magistrate, First Class (Municipal), Surat, in Prevention of Food Adulteration Case No.36 of 1986.

3. Appellant-Food Inspector collected sample of milk from the shop of respondent No.4 on March 5, 1986 around 6.30 a.m.. The sample of milk which was collected from the shop of respondent No.4, was sent to the public analyst after following the due procedure under the Prevention of Food Adulteration Act ('Act' for short). The report of the public analyst indicated that the milk did not comply with the standard prescribed under the Act and, therefore, a complaint came to be lodged by the appellant in the Court of learned Judicial Magistrate, First Class, (Municipal), Surat, which came to be numbered as P.F.A. Case No.37 of 1986.

4. The appellant was examined at Exh.5. After recording the evidence of the appellant, charge Exh.20 came to be framed against the respondents by the learned Judicial Magistrate on October 15, 1987. The respondents pleaded not guilty and claimed to be tried. The appellant in support of the case examined witnesses who were present at the time of taking of sample.

5. On appreciation of oral as well as documentary evidence and the arguments advanced by the learned advocates for the parties, the learned Judicial Magistrate acquitted the respondents from the charges punishable under Sections 7 and 16 of the Act, which has been challenged by the appellant in this appeal.

6. Learned Additional Public Prosecutor and learned advocate for the respondents have taken me through the entire evidence produced at the trial court. The evidence of the complainant does not indicate that he had collected sample in a clean and dry bottle, which is in clear violation of the mandatory provision of Rule 14 of the Prevention of Food Adulteration Rules ('Rules' for short). It is settled law laid down in a catena of decisions that, if the sample is collected in violation of Rule 14 of the Rules, then no conviction can be based on the report of the public analyst with regard to the sample which was collected in violation of Rule 14 of the Rules. Hence, the acquittal of the respondents deserves to be confirmed. The learned Judicial Magistrate has

also concluded that there was breach of Rule 18 of the Rules, but, since mandatory provision of Rule 14 was not followed by the appellant while collecting sample of milk, I do not deem it fit to consider and discuss the breach of another Rule.

7. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(M.H.Kadri, J.)

(swamy)